



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 219 and Appendix I to Chapter 2**

**[Docket DARS-2018-0019]**

**RIN 0750-AJ25**

**Defense Federal Acquisition Regulation Supplement: Mentor-Protege Program Modifications (DFARS Case 2017-D016)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Year 2017 that provide modifications to the DoD Pilot Mentor-Protégé Program.

**DATES:** Effective **[Insert date of publication in the FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer D. Johnson, telephone 571-372-6100.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published a proposed rule in the Federal Register at 83 FR 19677 on May 4, 2018, to implement section 1823 and paragraph

(b) of section 1813 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017. Sections 1823 and 1813 provide modifications to the DoD Pilot Mentor-Protégé Program ("the Program"). Section 1823 revises the definition and requirements associated with affiliation between mentor firms and their protégé firms. Both sections add new types of assistance for mentor firms to provide to their protégé firms.

## **II. Discussion and Analysis**

One respondent submitted a public comment in response to the proposed rule. DoD reviewed the public comment in the development of the final rule.

### A. Summary of Significant Changes From the Proposed Rule

There are no changes made to the final rule as a result of the public comment.

### B. Analysis of Public Comments

Comment: The respondent recommended a change to the proposed text in Appendix I, section I-107, paragraph (h). Specifically, the respondent proposed limiting the assistance to be provided by the mentor firm regarding Federal contract regulations to "guidance in obtaining training to enable understanding Federal contract regulations" instead of "assistance the mentor will provide to the protégé firm in understanding Federal contract regulations" as stated in the proposed rule. The rationale was that the text in the proposed rule could potentially expose the

mentor firm to liability when inevitable misunderstandings occur due to the complexity of the regulations.

Response: In drafting the text of I-107 paragraph (h), DoD used language that was very close to the text of section 1813 of the NDAA for FY 2017. The statutory language and, consequently, the draft DFARS text add to the mentor-protégé agreement an element in which the mentor will identify the assistance it will provide to the protégé in an effort to facilitate the protégé's understanding of Federal contract regulations. Such assistance could include guidance in obtaining training on the regulations, but it also could include other forms of assistance.

#### C. Other changes

The final rule includes a minor editorial change. In section I-111, paragraph (e) is revised to update the reference to renumbered paragraphs in I-107.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This final rule does not add any new provisions or clauses or impact any existing provisions or clauses.

### **IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **V. Executive Order 13771**

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

#### **VI. Regulatory Flexibility Act**

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

This final rule is necessary to implement statutory modifications to the DoD Pilot Mentor-Protégé Program ("the Program"). This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1823 and paragraph (b) of section 1813 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, which provide modifications to the Program. Specifically, section

1823 revises the definition and requirements associated with affiliation between mentor firms and their protégé firms. Both sections add new types of assistance for mentors to provide to their protégés.

There were no issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.

The rule will apply to small entities that participate in the Program. There are currently 72 small entities participating in the Program as protégé firms and six small entities participating as mentors.

The rule does not impose any reporting or recordkeeping requirements on any small entities.

DoD has not identified any alternatives that would meet the requirements of the applicable statute.

## **VII. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## **List of Subjects in 48 CFR Part 219 and Appendix I to Chapter 2**

Government procurement.

**Jennifer Lee Hawes,**

Regulatory Control Officer, Defense Acquisition Regulations  
System.

Therefore, 48 CFR part 219 and appendix I to chapter 2 are amended as follows:

1. The authority citation for 48 CFR part 219 and appendix I to chapter 2 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 219—SMALL BUSINESS PROGRAMS**

**219.7100 [Amended]**

2. Amend section 219.7100 by removing "November 25, 2015" and adding "December 23, 2016" in its place.

3. Amend appendix I to chapter 2 as follows:

a. In section I-101 by—

i. Redesignating sections I-101.1 through I-101.6 as sections I-101.2 through I-101.7, respectively; and

ii. Adding new section I-101.1.

b. In section I-102 by—

i. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively;

ii. Adding new paragraph (e); and

iii. In newly redesignated paragraph (f), removing "Subpart 9.4" and adding "subpart 9.4" in its place.

c. In section I-106 by adding paragraph (d) (6) (v).

d. In section I-107 by—

- i. Redesignating paragraphs (h) through (o) as paragraphs (i) through (p), respectively; and
  - ii. Adding new paragraph (h).
- e. Amending section I-111 by removing "I-107(k) through (m)" from paragraph (e) and adding "I-107(l) through (n)" in its place.

The additions read as follows:

**Appendix I to Chapter 2—Policy and Procedures for the DoD Pilot Mentor Protégé Program**

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**I-101.1 Affiliation.**

With respect to a relationship between a mentor firm and a protégé firm, a relationship described under 13 CFR 121.103.

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**I-102 Participant eligibility.**

\* \* \* \* \*

(e) A mentor firm may not enter into an agreement with a protégé firm if SBA has made a determination of affiliation. If SBA has not made such a determination and if the DoD Office of Small Business Programs (OSBP) has reason to believe, based on SBA's regulations regarding affiliation, that the mentor firm is affiliated with the protégé firm, then DoD OSBP will request a determination regarding affiliation from SBA.

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**I-106 Development of mentor-protégé agreements.**

\* \* \* \* \*

(d) \* \* \*

(6) \* \* \*

(v) Women's business centers described in section 29 of the Small Business Act (15 U.S.C. 656).

\* \* \* \* \*

**I-107 Elements of a mentor-protégé agreement.**

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(h) The assistance the mentor will provide to the protégé firm in understanding Federal contract regulations, including the FAR and DFARS, after award of a subcontract under the Program, if applicable;

\* \* \* \* \*

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